IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9059 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

BHARUCH DISTRICT COOPERATIVE MILK PRODUCERS

Versus

CHANDRESH P SHUKLA

Appearance:

MR NK MAJMUDAR for Petitioner

MR TR MISHRA for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 20/06/2001

ORAL JUDGEMENT

1. This petition, dismissed for default today, is restored on oral request and the learned counsel Mr.N.K.Majmudar for the petitioner and Mr.T.R.Mishra, learned advocate for the respondent are heard.

2. By way of this petition, the petitioner-employer has challenged the award of the Labour Court, Bharuch in original Reference (LCB) No.520 of 1984, which was converted into and re-registered as Reference (LCB) No.28 of 1990, whereby the petitioner is directed to reinstate the respondent on his original post with full backwages and costs of Rs.300/-. The said award dated 30.7.1998 is challenged by this petition dated 12.10.1998 wherein, after the order to issue Notice on condition of the petitioner depositing Rs.1,000/-, the hearing has been adjourned from time to time. On 29.3.2000, the petition was admitted and the operation of the impugned award was stayed by way of ad-interim relief on the condition of the petitioner reinstating the respondent and paying full current wages with effect from 30.7.1998 (Coram H.K.Rathod, J.).

3. Learned counsel Mr.Majmudar vehemently argued that in the peculiar facts and circumstances of the case, the petitioner could not be properly represented before the Labour Court on account of the sad demise of the petitioner's advocate. He fairly conceded that after the departmental enquiry was held to be vitiated by the Labour Court by the order dated 26.11.1992 below Exh.25, opportunity to prove the charges against the respondent was given by the Labour Court. However, the same could not be availed till the making of the award due to the death of the advocate of the petitioner. He, therefore, urged that the matter requires to be remanded to the Labour Court for recording of evidence in the interest of justice.

4. It appears from the plain reading of the impugned award that the original reference of the industrial dispute was made in the year 1984 and till the year 1992, only the validity of the departmental enquiry had come to be decided by the Labour Court. Thereafter, till the award was made, the petitioner does not appear to have made a single application or any effort to produce any evidence regarding the charges levelled against the respondent. Thus, as recorded by the Labour Court in the award, despite many opportunities having been given to the petitioner for proving the charges against the respondent, the petitioner had failed to adduce any evidence. In such circumstances, the Labour Court had no alternative but to close the evidence and, after appreciating the evidence on record, make appropriate award. Surprisingly, even after publication of the award, the petitioner has admittedly not approached the Labour Court to set aside the award if at all it was ex

parte and the petitioner had any grievance about failure of its advocate to appear before the Labour Court. In fact, neither in the petition nor in the reply to the queries made by the Court the date of the sad demise of the advocate is divulged by the petitioner. The process of adjudication proceeding, which has lasted for about 14 years and culminated into an award, cannot be put to naught by a vague plea of the petitioner about their unexplained absence in the proceedings before the Labour Court.

5. Therefore, in short, there is no substance in the petition and no error, much less an error apparent on the face of the record, could be pointed out requiring interference with the impugned award. Accordingly, the petition is dismissed. Rule is discharged with no order as to costs.

6. Since this petition has remained pending for a long time and the payment of backwages under the impugned award had remained stayed, it is now expected that the petitioner shall pay the due backwages to the respondent as expeditiously as practicable and preferably within three months from the date of receipt of the writ of this order.

Sd/-

20.6.2001 (D.H.Waghela, J.)

(KMG Thilake)